ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA175-4179; FRL-]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of Pittsburgh-Beaver Valley Ozone Nonattainment Area to Attainment and Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Pittsburgh-Beaver Valley moderate ozone nonattainment area (the Pittsburgh area) has attained the 1- hour ozone National Ambient Air Quality Standard (NAAQS) by its extended attainment date. The Pittsburgh area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the1998 to 2000 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area, and the most recent data which shows that the area is continuing to attain. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements along with certain other related requirements of Part D of Title 1 of the Clean Air Act (the Act), are not applicable to the Pittsburgh area. EPA is also approving the Commonwealth of Pennsylvania's Department of Environmental Protection (PADEP) request to redesignate the Pittsburgh area to attainment of the 1-hour ozone NAAQS. The Commonwealth's formal request was dated May 21, 2001. In approving this redesignation request, EPA is also approving as a revision to the Pennsylvania State Implementation Plan (SIP), the Commonwealth's plan for maintaining the 1-hour ozone standard for the next 10 years. EPA is also approving the 1990 base year emission inventory for nitrous oxides (NOx). EPA is

converting the limited approval of Pennsylvania's New Source Review (NSR) program to full approval throughout the Commonwealth with the exception of the 5-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area where it will retain its limited approval status until that area has an approved attainment demonstration for the 1-hour ozone standard.

EFFECTIVE DATE: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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SUPPLEMENTARY INFORMATION:

On January 10, 2001 [66 FR 1925], EPA published a determination of attainment for the Pittsburgh area. This notice of proposed rulemaking (NPR) also proposed a determination that certain requirements of the Act were no longer applicable. On May 30, 2001 [66 FR 29270], EPA published another NPR for the Commonwealth of Pennsylvania. This May 30, 2001, NPR proposed to redesignate the Pittsburgh area to attainment of the 1-hour ozone standard. EPA also

proposed to approve the maintenance plan that the Commonwealth submitted as a revision to the Pennsylvania SIP. EPA proposed these actions in parallel with the Commonwealth's process for amending the SIP. No substantial changes were made to the plan during the Commonwealth's adoption process and the Commonwealth formally submitted its adopted SIP on May 21, 2001. On May 30, 2001 [66 FR 29270] EPA also proposed approval of the 1990 NOx base year inventory and, to convert the limited approval of the Pennsylvania NSR program to full approval for the entire Commonwealth, with the exception of the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. This document is organized as follows:

I. What is the background for these actions?

II. What comments did we receive and what are our responses?

III. What actions are we taking?

IV. Why are we taking this action to redesignate the area?

V. What are the effects of redesignation to attainment of the 1- hour NAAQS?

VI. Administrative Requirements.

I. What is the background for these actions?

The history for these actions have been set forth in the proposed rulemakings published May 30, 2001 [66 FR 29270] and January 10, 2001 [66 FR 1925].

II. What comments did we receive and what are our responses?

We received letters containing adverse comments from 2 commenters and 1 letter in support of

our proposal of January 10, 2001. For our May 30, 2001 proposal, we received 5 letters opposed to our actions and 1 letter in support. Comments in support of the rulemaking action are not summarized below. The adverse comments and EPA's response to them are provided below.

A. Comments Related to Whether the Area Has a Fully Approved Plan

We received comments from several parties who assert that pursuant to 107(d)(3)(E)(ii) of the Clean Air Act, EPA cannot redesignate an area to attainment unless EPA "has fully approved the applicable implementation plan for the area." They contend that EPA has yet to fully approve the applicable implementation plan for the Pittsburgh area. The commenters maintain that, among other things, EPA has yet to fully approve the moderate area ozone SIP for this area by failing to have fully approved the following specific SIP elements required by the Clean Air Act:

(1) An Attainment Determination and Attainment Demonstration

Comment: Several commenters assert that the Act required moderate area SIP submittals to include an attainment demonstration based on modeling or other analytical method determined by EPA to be at least as effective. The commenters contend that EPA has not approved an attainment demonstration for Pittsburgh, nor has the state submitted an approvable attainment demonstration. The commenters also claim that EPA's proposal to waive requirements of section 172(c)(1) and 182(b)(1) of the Act concerning submission of the ozone attainment demonstration, reasonable further progress (RFP) demonstration and reasonably available control measures and section 172(c)(9) concerning contingency measures, is without justification. They also contend that EPA has no authority to waive these requirements. One commenter questions

why EPA makes no mention of the attainment demonstration adopted December 29, 1997 by the Commonwealth and asserts that EPA's proposal to waive the requirements of section 172(c), section 182(b)(1), and section 172(c)(9) have no effect since EPA has not redesignated the area.

Response: On January 10, 2001 [66 FR 1925], EPA proposed that the Pittsburgh area had attained the standard based on 1998-2000 monitoring data. With this finding, EPA also proposed that certain requirements, including an attainment demonstration, were no longer applicable as the area had attained the standard. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the Act and incorporates those explanation by reference. See [61 FR 20458] (Cleveland-Akron-Lorain, Ohio May 7, 1996); [60 FR 36723] (July 18, 1995) Salt Lake and Davis Counties, Utah); [60 FR 37366] (July 20, 1995), [61 FR 31832-33] (June 21, 1996) (Grand Rapids, MI), [65 FR 37879] (June 19, 2000) Cincinnati-Hamilton, Ohio and Kentucky. The United States Court of appeals for the Tenth Circuit has upheld EPA's interpretation. Sierra Club v. EPA, 99 F. 3d 1551 (10th Cir. 1996).

EPA reiterates the position set forth in its prior rulemaking actions and in the January 10, 2001 [66 FR 1925] proposed rulemaking for the Pittsburgh area. Subpart 2 of part D of Title I of the Act contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret the provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with other certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS

demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA interprets the general provisions of subpart 1 of part D of Title I (sections 171 and 172) not to require the submission of SIP revisions concerning RFP, attainment demonstrations or section 172 (c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Area Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. See Sierra Club v. EPA, 99 F. 3d. 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions ... as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" [57 FR 13564]. Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the Act. EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" [57 FR 13564].

The state must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the Pittsburgh moderate ozone nonattainment area from the 1998 to 2000 ozone seasons. Monitoring data for the 2001 ozone season shows that the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA had determined that the area has attained the 1-hour ozone standard during the 1998-2000 period (and has continued to do so, to date, in 2001), and therefore is not required to submit an attainment demonstration and a section 172 (c)(9) contingency measure plan, nor does it need any other measures to attain the 1-hour ozone standard.

EPA does not need to evaluate the attainment demonstration that the Commonwealth has previously adopted, because it is not necessary for this action, and is no longer a requirement for

the Pittsburgh area, because the area has attained the 1-hour ozone NAAQS. It also important to note that the Commonwealth has a fully approved 15 percent plan for the Pittsburgh area. [66 FR 17634] (April 3, 2001).

(2) An "All Reasonably Available Control Measures" (RACM) Analysis

Comment: One commenter asserts that EPA has not approved a demonstration that the SIP provided for implementation of all reasonably available control measures as expeditiously as practicable, 42 U.S.C. § 7502(c)(1), nor has the state met this requirement for Pittsburgh. The commenter states that EPA has no authority to waive this requirement, which is in addition to the requirement to demonstrate timely attainment.

Response: No additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment. The General Preamble, April 16, 1992 [57 FR 13560], explains that section 172 (c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement those measures that are reasonably available and necessary to attain as expeditiously as practicable. Because attainment has been achieved, no additional measures are needed to provide for attainment.

The suspension of the attainment demonstration requirements pursuant to our determination of attainment include the section 172(c)(1) RACM requirements as well. The General Preamble

treats the RACM requirements as a "component" of an area's attainment demonstration. Thus, the suspension of the attainment demonstration requirement pursuant to our determination of attainment applies to the RACM requirement, since it is a component of the attainment demonstration.

(3) Reasonably Available Control Technology (RACT)

Comment: Several commenters state that the Act explicitly requires that the SIP mandate RACT for all VOC sources within the nonattainment area, including each category of VOC sources covered by Control Technique Guideline (CTG) documents. 42 U.S.C. § 7502(c), 7511a (b)(2). The commenters point out that EPA concedes that the requirement to fully approve the RACT SIP has not been met as of the date of the redesignation proposal.

Several commenters state that the Commonwealth has not adopted source category RACT rules for all CTG categories including: aerospace, synthetic organic compound manufacturing, reactor and distillations processes, shipbuilding, wood furniture, large petroleum dry cleaners, air oxidation processes in synthetic organic chemical manufacturing industries, equipment leaks from natural/gas gasoline processing plants, and a number of others. One commenter postulates that EPA will suggest that it will require source specific RACT for all sources within each category before finalizing the redesignation proposal and the commenter asserts that this approach circumvents the mandate to adopt RACT for each category of VOC sources covered by CTG documents. This commenter goes on to say the these category RACTs were to have been adopted and complied with years ago and EPA cannot retroactively deem the SIP to be in

compliance with part D.

Several commenters assert that if EPA intends to grant the state's redesignation request based on potential future EPA approvals of state RACT determinations, then it will deprive the public of the opportunity to offer fully informed comment as to whether the plan as a whole meets all of the applicable requirements of section 110 and part D of the Act, as well as the appropriateness of their inclusion in the redesignation.

Response: The Pittsburgh area has satisfied all applicable ozone requirements and has a fully approved ozone SIP. In acting upon a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the Pittsburgh area has a fully approved SIP. See "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3. The Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See [61 FR 20458] (Cleveland-Akron-Lorain, Ohio May 7, 1996); [60 FR 37366] (July 20, 1995), [61 FR 31832-33] (June 21, 1996) (Grand Rapids, MI).

In our proposed redesignation on May 30, 2001, we stated that we would not take final action to redesignate Pittsburgh until it had taken all actions necessary for EPA to convert the limited

approval of the generic RACT regulation to a full approval for the Pittsburgh area. Since our proposal, EPA has taken final action approving the source-specific SIP revisions submitted by the Commonwealth for all the sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. On August 24, 2001, EPA proposed to convert the limited approval of the Commonwealth's NOx and VOC RACT regulation to full approval in the Pittsburgh area. EPA has taken final action on that proposal and converted the limited approval of the Commonwealth's NOx and VOC RACT regulation to full approval. The Commonwealth has met the requirements of the Act's RACT provisions for the Pittsburgh area.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This requirement, referred to as the non-CTG VOC RACT requirement, clearly does not require category-specific RACT rules. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement (including the requirements for CTG RACT) to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case- by-case determination, but EPA provided CTG's to simplify the

process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG- subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for individual sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

While EPA believes that the Commonwealth was not obligated to impose RACT via the adoption of VOC source category rules for the reasons provided, above, nonetheless, EPA has approved the Commonwealth's VOC source category rules for aerospace [June 25, 2001, 66 FR 33645] and for wood furniture [July 20, 2001 , 66 FR 37908].

In a letter from the PADEP (then the Pennsylvania Department of Environmental Resources), dated April 19, 1993, the Commonwealth made negative declarations for the CTG source categories of large petroleum dry cleaners, and equipment leaks from natural gas/gasoline processing plants. The Commonwealth made a negative declaration on September 28, 2001 for point source shipbuilding emissions in the counties of Armstrong, Butler, Beaver, Fayette, Washington, and Westmoreland. The Allegheny County Health Department (ACHD) made a negative declaration on September 27, 2001, for subject shipbuilding sources in Allegheny County.

The public has had opportunity to comment on three occasions on the generic RACT rule. In addition, EPA provided comment periods for its approval of each source specific rule, as well as for each of the category rules. Furthermore, EPA recently published approval notices for all remaining case specific RACT determinations for sources located in the Pittsburgh area and the public did indeed exercise their right to comment on those proposed actions. EPA disagrees that the public has not had adequate opportunity to offer fully informed comment as to whether the plan submitted by the Commonwealth meets all of the applicable requirements of section 110 and part D of the Act. The public has had ample opportunity to comment on the RACT regulations adopted by the Commonwealth, and EPA is entitled to rely on these previously-approved rules in determining that the State has a SIP that meets those applicable requirements. See Southwestern Pennsylvania Growth Alliance v. Browner, 144 F.3d 984, 989 (6th Cir. 1998).

EPA disagrees with the commenter that it is "retroactively" deeming that the State has complied

with the RACT requirements of the Act. With respect to many of these source-specific rules, the source has been subject to and complying with the requirements for an extended period of time. Simply because EPA is only now taking action on those rules does not mean that the State or the source failed to meet the statutory RACT obligation. Finally, to the extent that the State and/or the source is late in meeting the statutory RACT obligation, EPA does not believe that Congress intended that such an area could never be redesignated to attainment, as the commenter appears to suggest. At this point, the best such an area can do is to meet the requirement as quickly as possible – the area cannot retroactively comply. Thus, EPA believes that Congress intended that once such an area complied with the statutory requirements – as is the case with Pittsburgh – the area may be redesignated.

(4) New Source Review (NSR)

Comment: We received several comments regarding NSR and its approval into the SIP. The commenters assert that the Act explicitly requires the SIP to include a preconstruction permit program for new sources and modifications within the nonattainment area. (42 U.S.C. section 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511a(a)(2)(C), (b)(5)). The commenters assert that the NSR program should not be approved without an approved attainment demonstration in the Pittsburgh area. One commenter also asserts that EPA cannot approve the Commonwealth's rule without first promulgating "Alternative 2" of the federal NSR rule revision. This commenter also asserts that approval of the Commonwealth's NSR program is in conflict with section 184 of the Act, because the Commonwealth's NSR rule does not require the same offset credit restrictions in the marginal and attainment areas as required by section 184 of the Act. One of

the commenters also contends that the NSR program's conditional approval status has expired and should already have been converted to a disapproval. This commenter also asserts that the EPA-required restrictions on shutdown credit are lacking in the program.

Response: As indicated, pursuant to EPA's issuance of an attainment determination for the Pittsburgh area, an approved attainment demonstration is no longer an applicable requirement. EPA has, however, now fully approved the NSR program for the Pittsburgh area. On May 2, 1997, EPA proposed to grant limited approval of Pennsylvania's NSR program [62 FR 244060]. On December 9, 1997 [62 FR 64722] EPA published its final rule granting limited approval of Pennsylvania's NSR program and incorporated 25 Pa. Code of Regulations, Chapter 127, Subchapter E, Subsections 127.201 through 127.217, inclusive, by reference into the Pennsylvania SIP. [See 40 CFR part 52 at 52.2020(c)(107).] The proposed and final actions provided a detailed description of how the Commonwealth's NSR regulations satisfy the requirements of sections 172, 173, 182 and 184 of the Act. As explained in section I. C. of the May 2, 1997 notice of proposed rulemaking [62 FR 24061], under section 184 of the Act, the preconstruction permitting requirements applicable to moderate ozone nonattainment areas apply to ozone attainment areas and to marginal and moderate ozone nonattainment areas in the Commonwealth because Pennsylvania is located in the Ozone Transport Region (OTR). Section II. A. of the May 2, 1997 proposal [62 FR 24062] explicitly states that Pennsylvania's NSR requirements for moderate ozone nonattainment areas apply throughout Pennsylvania with the exception of the Philadelphia severe ozone nonattainment area. Subsections 127.203, 127.208, and 127. 210 of the Commonwealth's SIP-approved regulations, in particular, satisfy section 184

of the Act by imposing the same offset-related requirements to attainment, and marginal nonattainment areas of the Commonwealth as those applicable to moderate ozone nonattainment areas.

On December 9, 1997, when EPA approved Pennsylvania's NSR regulations into the SIP, its sole reason for granting limited approval, rather than full approval, of Pennsylvania's NSR regulations was that they do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions apply in nonattainment areas without an approved attainment demonstration [see 40 CFR Part 51.165(a)(ii)(C)]. (The submittal and approval of an attainment demonstration is not required by the Act for ozone nonattainment areas classified as marginal, nor is it required in areas designated as attainment for ozone.) As EPA is, by this action, approving the attainment determination for the Pittsburgh area proposed on January 10, 2001 [66 FR 1925], approval of an attainment demonstration is not a requirement for the Pittsburgh area. Pursuant to EPA's determination of attainment, an attainment demonstration is no longer required, and thus similarly, an approved ozone attainment demonstration is no longer required under the NSR provisions for ozone. Since the premise of 40 CFR 51.165(a)(ii)(C)(1), that an attainment demonstration is required, does not exist, EPA concludes that the regulation should be interpreted so as not to require an approved attainment demonstration where no attainment demonstration is required. Therefore, EPA has determined that it is appropriate, at this time, to grant full approval of the Commonwealth's NSR regulations as they apply throughout the Commonwealth with the exception of the five-county Pennsylvania portion of the Philadelphia-

Wilmington-Trenton ozone nonattainment area. That area is the only portion of the Commonwealth where the approval of an attainment demonstration is still required. EPA intends to take rulemaking action to grant full approval of the Commonwealth's NSR regulations in the five-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area at such time as that area has an approved attainment demonstration.

It should be noted that when EPA proposed to remove the limited nature of its approval of the Commonwealth's NSR program on May 30, 2001, it clearly was not taking action to re-approve Pennsylvania's entire NSR program. Therefore, not only does EPA disagree with the comments that the Commonwealth's NSR regulations fail to satisfy the Act and the current Federal NSR-related requirements for nonattainment areas found at 40 CFR Subpart I, EPA does not believe that such comments are timely.

Because Pennsylvania's NSR regulations satisfy the current federal NSR-related requirements for nonattainment areas found at 40 CFR Subpart I, EPA disagrees with the comment that it cannot grant approval of the Commonwealth's NSR without first promulgating "Alternative 2" of the proposed revisions to the federal NSR rules. The commenter's reference to Alternative 2 refers to language in the July 23, 1996 NSR rulemaking proposal which has not been finalized, and therefore the Agency believes that it is not currently an applicable NSR requirement.

EPA did not grant the Commonwealth's NSR program a conditional approval, and, therefore disagrees with the comment that any conditional approval has expired and should have been

converted to a disapproval.

Even if the NSR program for Pittsburgh were not fully approved the area would still qualify for redesignation, since EPA has previously interpreted the Clean Air Act as not requiring a fully approved NSR program for redesignation of an area subject to the section 184 transport requirements. EPA has set forth its rationale for its interpretation that NSR and other section 184 ozone transport requirements are inapplicable for redesignation purposes in its proposed and final rulemakings on Reading, Pennsylvania. See 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 - 24834(May 7, 1997), which are incorporated herein by reference.

(5) Conformity

Comment: Several commenters asserted that the SIP does not include fully approved transportation conformity procedures that comply with Part D of the Act under section 176, and that EPA has no authority to waive this requirement for SIPs. One commenter argues that the Commonwealth is still obligated to submit such procedures and the fact that federal procedures apply does not excuse failure to adopt conformity procedures as required by the statute. The commenter contends that the Act allows redesignation to attainment only when EPA has fully approved the SIP and the state has met all requirements applicable to the area under section 110 and Part D.

Response: The Commonwealth of Pennsylvania has met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Pennsylvania general

conformity rules effective September 29, 1997 [62 FR 50870].

Section 176(c) provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA requires EPA to promulgate. The Federal general conformity regulations were finalized on November 30, 1993, and the Federal transportation conformity regulations were finalized on November 24, 1993. The Federal general conformity regulations have remained the same since that time, but the Federal transportation conformity regulations have been amended several times since 1993.

The Federal transportation conformity regulations were amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). Conformity regulations needed to be revised again, due to the March 2, 1999 court decision, Environmental Defense Fund v. EPA, 167 F. 3d 641 (D.C. Cir. 1999). Pennsylvania submitted transportation conformity rules on November 21, 1994, but EPA has not acted upon the rules and the rules must be revised to be consistent with the amendments EPA made consistent with the court rulings in EDF. v. EPA, supra.

EPA believes, however, that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is two-fold. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Clean Air Act continues to apply to areas after redesignation to attainment, since these areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal

conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See, for example Grand Rapids redesignation at 61 FR 31835-31836 (June 21, 1996) and the Cincinnati redesignation at 65 FR 37879, 37885-37886 (June 19, 2001). EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See, Tampa, Florida and Cleveland-Akron-Lorain redesignations [60 FR 52748] (December 7, 1995), and [61 FR 20458] (May 7, 1996), respectively. Consequently, EPA may approve the ozone redesignation request for the Pittsburgh area notwithstanding the lack of a fully approved conformity SIP. The United States Court of Appeals for the sixth Circuit has recently upheld EPA's interpretation in Wall v. Environmental Protection Agency, no. 00-4010, slip. op. at 21-24 (6th Cir. Sept. 11, 2001). The Court upheld EPA's determination that "failure to submit a revision...that meets the part D transportation-conformity submissions requirements is not a basis to deny" redesignation to attainment. Id. at 24.

(6) Approval of the NOx SIP Call

Comment: A commenter states that the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by any other State under 42 U.S.C. section 7410(a)(2)(D)(I). The commenter asserts that EPA has specifically determined that emissions from Pennsylvania contribute significantly to ozone nonattainment in

downwind states and has issued a SIP call to require additional NOx controls in the Pennsylvania SIP to address this problem. The commenter asserts that EPA has not fully approved the state's rule to meet the SIP call requirements, thus the SIP is not yet fully approved.

Response: EPA believes that submissions under the NOx SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. That said, EPA has fully approved the Commonwealth's NOx SIP call rule on August 21, 2001 [66 FR 43795] as meeting the portion of the SIP call rule that were not remanded by the Court in Michigan v. EPA, 213 F. 3d. 663 (D.C. Cir. 2000).

The NOx SIP call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NOx SIP call submittal requirements continue to apply to the States regardless of the designation of any one particular area in these States.

Thus, we do not agree that the NOx SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport

requirements. See Reading, Pennsylvania proposed and final rulemakings [61 FR 53174-53176] (October 10, 1996), [62 FR 24826] (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking [61 FR 20458] (May 7, 1996); and Tampa, Florida final rulemaking at [60 FR 62748, 62741] (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation [65 FR 37890] (June 19, 2000).

(7) Photochemical Grid Modeling and Favorable Meteorology

Comment: The commenter asserts that neither the states nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. § 7407(d)(3)(E)(iii). The commenter takes issue with the finding that this criteria is met because, although the Commonwealth has adopted measures that have produced some emission reductions, the commenter believes that EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations. The commenter claims that the only way to reliably make such a showing would be through photochemical grid modeling. The commenter states that no such modeling is presented or discussed in this proposal and that given the complex chemistry and meteorology of ozone formation, the combination of NOx and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The lack of violations in 1998-2000, the commenter states, could just as well be due to weather patterns or changes in transport of ozone precursors. Without modeling to determine the actual impact of adopted and enforceable controls, the commenter finds EPA's claim that the area has attained the NAAQS, to be speculative.

Another commenter asserted the area was aided in attainment by a 2000 ozone season in which there were no temperatures which exceeded 90 degrees Fahrenheit.

Response: As provided in longstanding EPA policies, we believe that photochemical grid modeling is not necessary to show that the improvement in air quality is due to permanent and enforceable emissions reductions. See General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, [57 FR 13496] (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our policies provide that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rational set forth in the Cincinnati redesignation [65 FR 37879, 37886-37889] (June 19, 2000). The sixth Circuit has recently upheld EPA's interpretation in Wall v. EPA, supra, slip. op at 16-20.

Reductions in ozone precursor (VOC and NOx) emissions have brought many areas across the

country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston [59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994], Greenbrier County [60 FR 39857, August 4, 1995], Parkersburg [59 FR 29977, June 10, 1994]; [59 FR 45978, September 6, 1994], Jacksonville/Duval County [60 FR 41, January 3, 1995], Miami/Southeast Florida [60 FR 10325, February 24, 1995], Tampa [60 FR 62748, December 7, 1995], Lexington [60 FR 47089, September 11, 1995], Owensboro [58 FR 47391, September 9, 1993], Indianapolis [59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994], South Bend-Elkhart [59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994], Evansville [62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997], Canton [61 FR 3319, January 31, 1996], Youngstown-Warren [61 FR 3319, January 31, 1996], Cleveland-Akron-Lorain [60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996], Clinton County [60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996], Columbus [61 FR 3591, February 1, 1996], Kewaunee County [61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996], Walworth County [61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996], Point Coupee Parish [61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997], and Monterey Bay [62 FR 2597, January 7, 1997]. Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Between 1990 and 1999 area-

wide VOC and NOx emissions in the Pittsburgh area decreased by 16% and 30%, respectively. These emissions reductions are due to point source reductions such as RACT, additional NOx controls, 111(d) plans and National Emission Standards for Hazardous Air Pollutants (NESHAPS) which reduce VOCs, Prevention of Significant Deterioration (PSD), and NSR. Additional controls are implemented for the following categories: Automobile refinish coatings, consumer products, architectural and industrial maintenance coatings, wood furniture coatings, aircraft surface coating, marine surface coatings, metal furniture coatings, municipal solid waste landfills, treatment storage and disposal facilities, and Stage II vapor recovery. Several programs are implemented to reduce highway vehicle emissions, such as the Federal Motor Vehicle Control Program (FMVCP), a Pittsburgh-specific summertime gasoline 7.8 psi volatility limit, and enhanced Inspection and Maintenance (I/M). Nonroad source programs include Federal rules for large and small compression-ignition engines, small spark-ignition engines, and recreation spark-ignition marine engines.

Ozone air quality monitoring data show that the design value changed from 0.149 parts per million (during the 1987-1989 time period) to 0.123 parts per million (during the 1998-2000 time period). The number of expected exceedances declined from 7.0 days per year during 1987-1989 to 1.0 days per year during 1998-2000. This shows that reductions in ozone concentrations correspond to the reduction in ozone precursors emissions in the area.

The commenter claims that the combination of NOx and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area

shows that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, other levels of VOC and NOx reductions have also resulted in attainment. See areas listed above in first part of this response. The Pittsburgh area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

The commenter claims that the lack of violations during 1998-2000 could be due to weather patterns or changes in transport of ozone precursors, but does not point to any evidence to support this conclusion. We use a three year period of air quality to account for changes in weather conditions that can occur from year to year. Weather condition may have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone. However, this effect is not controllable and EPA uses a three year average to account for changes in meteorology. In the case of the Pittsburgh area, the fact that from 1999 to today the area continues to be in attainment of the ozone standard increases our confidence that weather is not a controlling factor in the area's attainment. Furthermore, during the weeks of August 5th and August 12th of 2001, the Pittsburgh area experienced multi-day meteorological episodes in which the temperatures exceeded 90 degrees, and the ambient ozone levels stayed well below the standard at each monitor.

(8) Use of Accurate and Current Emission Inventory

Comment: One Commenter questions whether the Commonwealth used current and accurate

emissions inventories in the analysis to determine maintenance of the 1-hour NAAQS.

Response: The Commonwealth used current and accurate emissions inventories. The Commonwealth uses the 1999 emissions inventory as a base year emissions inventory for demonstrating that emissions during the 10 year maintenance period will stay below attainment year levels. The 1999 inventory is the appropriate inventory to be used to demonstrate maintenance of the NAAQS, because the 1999 inventory is a representation of emission levels during the time the area has attained the NAAQS. EPA converted the conditional approval of the Commonwealth's 1990 base year VOC inventory to full approval on April 3, 2001 [66 FR 17634]. On May 30, 2001 EPA proposed to approve the 1990 NOx base year inventory. EPA did not received comments specific to the 1990 NOx base year inventory and today is fully approving the Commonwealth's base year NOx inventory. These 1990 base year NOx and VOC emissions inventories are approved for use in projecting current inventories and out year inventories.

B. Comments Related to the Maintenance Plan

Comment: A commenter asserts that the plan does not demonstrate maintenance for ten years as required by sections 107(d)(3)(E)(iv) and 175A of the Clean Air Act. The commenter says that EPA proposes to find maintenance not on the basis of modeling, as required by the CAA, but on the presumption that the area will always be in attainment if emissions remain at or below estimated 1999 levels. The commenter asserts that such a presumption is not rationally supportable, pointing out that the area violated the NAAQS in the 1997-1999 period. Therefore,

the commenter reasons, holding emissions to 1999 levels does not assure attainment. The commenter states that, even assuming the emission reductions predicted by the states for 1999 and subsequent years, there is no technical analysis in the record demonstrating that those emission levels will assure maintenance. The commenter contends that such a demonstration requires photochemical grid modeling that accounts for the kinds of weather conditions and transport impacts experienced on appropriately chosen design days. According to the commenter, until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

The commenter states that the history of this nonattainment area shows that EPA cannot rationally assume that emission levels correlate with ozone levels in a linear or consistent fashion; the area has gone in and out of attainment over the past 10 years while local emission were supposedly declining. The commenter asserts that there is no reason to believe that the state's attainment inventory approach toward projecting future maintenance is any more reliable now than it was in 1993. The commenter states that the state itself asserts that the area cannot maintain compliance with the standard solely through local reductions and will only be able to maintain the NAAQS through reductions from Ohio and West Virginia.

Response: We believe that the monitoring shows that the current level of emissions is adequate to keep the area in attainment. The following table summarizes the number of expected exceedances at each monitor in the area for 1974 to 2000 for each three year period. A monitor has to measure more than 1.0 average expected exceedances over a three year period to cause a

violation of the 1-hour ozone standard (Expected exceedances take into account actual monitored exceedances and account for days where there is missing data or the data was invalidated.) See 40 CFR § 50.9 and Appendix H. The table shows that the number of exceedances have decreased from what was monitored in the late 1970's.

Table 1. 1-Hour Ozone NAAQS Expected Exceedances in the Pittsburgh Area from 1974 to 2000

Year	Design Monitor	Average Expected Exceedances per year
1974-1976	Baden	6.5
1975-1977	Beaver Falls	5.7
1976-1978	Beaver Falls	13.2
1977-1979	Beaver Falls	11.7
1978-1980	Lawrenceville	9.2
1979-1981	Lawrenceville	6.1
1980-1982	Lawrenceville	3.4
1981-1983	Brackenridge	4.4
1982-1984	Brackenridge	2.9
1983-1985	Brackenridge	2.4
1984-1986	Midland	0.8
1985-1987	Brackenridge	1.7
1986-1988	Brackenridge	6.6
1987-1989	Brackenridge	7.0
1988-1990	Brackenridge	5.6
1989-1991	Lawrenceville	0.7
1990-1992	Lawrenceville	0.3
1991-1993	Harrison Township	0.7
1992-1994	Harrison Township	0.7
1993-1995	Harrison Township	3.0
1994-1996	Harrison Township	2.7
1995-1997	Harrison Township	3.3

1996-1998	Charleroi	1.0
1997-1999	Penn Hills	1.3
1998-2000	Charleroi	1.0

The area has monitored attainment for the three year period from1998-2000 and continues to monitor attainment in 2001. This demonstrates that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the Act does not presume that the area will always be in attainment. The Act provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

Our policy allows areas to prepare an attainment emissions inventory corresponding to the period when the area monitored attainment. It also allows areas to project maintenance by showing that future emissions will stay below the attainment emissions inventory. See "Use of Actual Emission in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. The attainment inventory estimates 1999 emissions, which is within the 1998-2000 time period of attainment. Emissions are projected to remain below this level for the next 10 years.

Holding emissions at or below the level of the attainment inventory is adequate to reasonably assure continued maintenance of the 1-hour ozone standard. Reductions in ozone precursor

emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Photochemical grid modeling is not needed to show that the area has attained or will maintain the standard. The air quality will be maintained by keeping below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. Reductions in ozone precursor emissions have brought many areas across the country into attainment.

Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. The majority of areas have continued to maintain the 1-hour ozone standard using that approach. See redesignations cited in the response provided at II. A (7) of this document. See also discussion at [65 FR 37887-37889] (June 19, 2000) Cincinnati-Hamilton, and Wall v. EPA , supra, at 16-20. Emissions inventories can be used to project maintenance of the 1-hour ozone standard. As previously stated, if the attainment level of emissions is not adequate to protect against a violation and the area monitors a violation, then the contingency measures in the maintenance plan would be triggered to bring the area back into attainment. There are ozone monitors located in the Pittsburgh area to ensure that the area's air quality remains below the level set by the 1-hour ozone standard.

The comment that EPA should not assume that "emission levels correlate with ozone levels in some sort of linear or consistent fashion" is in effect a recommendation that future maintenance be tested assuming meteorological conditions that are more conducive to ozone formation than the conditions that have prevailed in 1998 to 2000. No factor other than meteorological

conditions is known to introduce an inconsistency between ozone and emissions. The commenter protests that the area has not submitted a maintenance demonstration based on ozone modeling, and implicitly urges that the modeling assume 1997- type conditions, or worse. However, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 1998-2000 period, not 1997. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period. EPA believes this modeling guidance is reasonable and appropriate.

In response to the commenter's assertion that the Commonwealth does not believe that it can maintain the NAAQS without reductions from upwind state such as Ohio and West Virginia, both EPA and the Commonwealth recognize the importance of the full implementation of the NOx SIP call to provide additional air quality benefit to the Pittsburgh area. Furthermore, as the D.C. Circuit has largely upheld the NOx SIP call, it is eminently reasonable to expect that the reductions in states upwind of Pittsburgh will occur.

C. Comments Related to the Enforceability and Permanence of Control Measures

1) Comment: Several commenters express doubts that certain of the programs relied upon in the maintenance plan will remain permanent and enforceable in the Commonwealth and asserts that EPA simply assumes that the measures relied on for continued and future emissions reductions will continue to be implemented. Related comments express concerns over the permanence of

the enhanced I/M and NSR programs.

Response: The Act requires the area to have a fully approved SIP and to have met all of the applicable requirements of the Act. The area's SIP satisfies these requirements as described in EPA's proposed rulemaking published on May 30, 2001 [66 FR 29270]. The measures that the Commonwealth is relying on to maintain the 1-hour ozone standard have been approved into the SIP and are state and Federally enforceable. The state must continue to implement these measures as provided for in the Federally approved SIP. Furthermore, the Act does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation [65 FR 37879, 37881-882], and sixth Circuit decision in Wall v. EPA, supra, at 20-21, upholding EPA's interpretation of the requirement.

All of the control measures which the Commonwealth relied upon to generate the 1999 and future emission levels, inventories are SIP-approved measures, including the enhanced I/M and NSR programs. These programs have been legally adopted by the Commonwealth and EPA has approved them into the Pennsylvania SIP. EPA cannot withhold its approval of the maintenance plan submitted by the Commonwealth because of concerns that Pennsylvania may, at some future time, either submit a SIP revision to amend or remove a program, or that the Commonwealth may fail to implement these programs in the Pittsburgh area. The Federally approved SIP requirements remain in place, and enforceable until such time as EPA takes action to approve

SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review. In addition, if the state fails to implement the approved SIP, Section 179 provides for EPA to impose sanctions.

EPA has recently promulgated rules for On-Board Diagnostics (OBD) testing provisions for 1996 and newer vehicles in existing I/M programs. The Commonwealth's currently approved enhanced I/M SIP requires Pennsylvania to implement OBD as part of its I/M program in the Pittsburgh area in accordance with the Federal rule. Any changes the Commonwealth makes with respect to the I/M program must ensure an equivalent level of emission reductions as is currently credited. Again, any changes made to the Federally approved and enforceable program would need to go through Pennsylvania's formal regulatory adoption process and EPA's SIP approval process, ensuring ample public participation opportunity.

Likewise, any changes to the Commonwealth's SIP-approved NSR program would need to go through Pennsylvania's formal regulatory adoption process and EPA's SIP approval process, ensuring ample public participation opportunity. In order to be approvable, any such changes would have to ensure that the construction of major new sources and major modifications in the Pittsburgh area would not interfere with the with approved maintenance plan.

Furthermore, any changes made by the Commonwealth to SIP approved measures would require EPA approval in accordance with section 110 (l) of the Act.

(2) Comment: We received a comment asserting that the maintenance plan is not approvable because it lacks enforcement programs and commitments of resources as required by the Act 42 U.S.C. § 7410(a)(2)(E).

Response: EPA disagrees with the commenter's assertion that states must provide such information with each SIP revision. See Wall v. EPA, supra. Although Clean Air Act sections 110(a)(2)(E) and 110(a)(2)(C) do contain these provisions, section 110(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 110(a)(2)(H). Once EPA approves a State's SIP as meeting section 110(a)(2), EPA is not required to reevaluate that SIP for each new revision to the plan to meet additional requirements in later sections of the Act. The Commonwealth of Pennsylvania had previously received approval of its 110(a)(2) SIPs. See discussion in the Cincinnati redesignation of this issue [65 FR 37879, 37881-882] (June 19, 2000). The sixth circuit has upheld EPA's interpretation in Wall v. EPA, supra, at 20-21.

In a final rulemaking action published on February 26, 1985 [50 FR 7772, 7776], EPA approved Pennsylvania's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 [48 FR 5096, 5101]. This approval action reaffirmed

EPA's May 20, 1980 [45 FR 33607] approval of these resource commitments for the Pittsburgh area portion of the Pennsylvania ozone nonattainment SIP.

Neither this commenter nor any other person has submitted substantive comments that would lead EPA to separately analyze whether it should call on Pennsylvania to revise its section 110(a)(2) SIPs regarding enforcement and funding.

D. Comments Related to Contingency Measures

(1) Comment: Several commenters assert that the maintenance plan lacks adequate contingency provisions including a plan for the schedule of adoption, description of measures, or quantification of reductions of the measures to be implemented should the area violate the standard. One commenter also asserts that the plan does not contain adequate provisions to adopt additional measures should inventory tracking indicate that a future violation is possible. The commenter states that future inventory analyses indicating possible violations should trigger the contingency measures. Commenters state that the plan makes no showing that the model VOC rules currently under consideration for the Philadelphia nonattainment area will assure correction of any violations in the Pittsburgh area and that these measures are only under consideration. One commenter states that the VOC measures referenced by the Commonwealth provide no estimation of reductions that would be achieved in Pittsburgh should these measures be adopted and that adoption of these measure could take up to two years.

One commenter asserts that the maintenance plan submitted by the Commonwealth does not contain a mandatory commitment to implement all ozone-control measures in the SIP prior to redesignation. The commenter contends that this commitment is required, regardless of whether or not the state is currently implementing all measures and EPA does not have the discretion to approve the maintenance plan without this commitment.

Response: EPA disagrees that the Commonwealth's maintenance plan for the Pittsburgh area lacks adequate contingency provisions should the area violate the standard. Page 43 of the maintenance plan specifically states that if a violation occurs, the Commonwealth will adopt additional emission reductions, as expeditiously as practicable, in accordance with the Pennsylvania Air Pollution Control Act to return the area to attainment with the health-based one-hour ozone standard. Page 44 of the maintenance plan clearly states that its contingency plan measures include four of the model rules currently being considered as additional measures for the Philadelphia ozone nonattainment area. The plan specifically states that these VOC model rules have the potential to reduce emissions from specific types of sources and source operations, namely consumer products, portable fuel containers, Architectural and Industrial Maintenance (AIM) coatings and solvent cleaning operations. The Commonwealth has provided to EPA estimations of reductions in VOC emissions that would be achieved by adoption of these contingency measures in the seven-county Pittsburgh area. This information has been added to the docket for this final rule.

The Commonwealth has also supplied information that sets forth the schedule for adoption of regulations under the Pennsylvania Air Pollution Control Act, and that information has been placed in the docket of this final action. The schedule indicates that Pennsylvania would move to adopt and implement contingency measures within 12 to 24 months of a violation. The Commonwealth has also stated that the contingency measures would be implemented in accordance with the requirement of section 175A(d) of the Clean Air Act that they "promptly correct any violation." As stated in the September 4, 1992 Calcagni memorandum, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." In light of the language of the maintenance plan, the supplemental information supplied by the Commonwealth, existing EPA guidance and actions regarding contingency measures in other redesignations, and the absence of any suggestion to the contrary from the Commonwealth, EPA is construing the Pittsburgh maintenance plan as embodying a commitment to adopt and implement contingency measures within 12 to 24 months of a violation. The provisions regarding the study and possible choice of contingency measures in the event of an exceedance or increase in the emissions inventory provide further assurance that air quality problems that might occur after redesignation will be promptly corrected.

In the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10-percent increase in ozone precursor emissions, the maintenance plan requires the

Commonwealth to evaluate whether additional emission controls are needed to prevent a future 1-hour ozone NAAQS violation. EPA views this commitment to be adequate and enforceable. This approach is consistent with the September 4, 1992 Calcagni memorandum, which states that the maintenance plan should "identify specific indicators, or triggers, which will be used to determine when the contingency measure need to be implemented ...The indicators would allow the State to take early action to address potential violations of the NAAQS before they occur." See September 4, 1992, Calcagni memo, p. 12. Pennsylvania's plan addresses this requirement by identifying two occurrences that trigger a study to evaluate whether further emission control measures should be implemented. This will allow the Commonwealth to take early action to address future potential violations. It requires the Commonwealth to fully evaluate the current air quality status and control status of the area, and determine if, and what level of, action should be implemented to prevent further air quality deterioration.

As to the comment regarding implementation of SIP measures as contingency measures, EPA does not believe that a further commitment is needed from the Commonwealth to implement as contingency measures all ozone control measures in the SIP prior to redesignation. Section 175(A)(d) requires that "[s]uch provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State Implementation plan for the area before redesignation of the area as an attainment area." There are no measures in the Pennsylvania SIP to which the section 7505(d) commitment language could apply since the Commonwealth has not sought t drop any measures from the portion of the SIP that is being implemented. All measures that are either already

implemented or scheduled to be implemented, e.g., the NOX SIP call, are still in the SIP and are required to be implemented. There is thus no need for the state to commit to further implementation in light of the fact that it is required to continue to implement all measures contained in its SIP. Since the section 7505(d) requirement to implement all measure is being satisfied, there is no requirement for an additional commitment. The State could not make any change in implementation of these control measures after redesignation without EPA approval of a SIP revision. Such a revision would have to meet the requirements of section 110 (l) which requires that the revision could not interfere with any applicable requirement. Under these circumstances EPA considers that the requirement of section 7505(d) is satisfied.

With respect to the NOx SIP call, which has an implementation deadline in the Commonwealth in 2003, EPA disagrees that this SIP element is necessary for redesignation (see comment(6)), and therefore no additional commitment is needed from the Commonwealth regarding this SIP element.

(2) Comment: A commenter asserts that Stage II vapor recovery, auto refinishing, consumer products, and AIM are listed as contingency measures and this is double counting.

Response: Stage II, auto refinishing, consumer products and AIM are state and Federal programs currently implemented in the Pittsburgh area. These programs have assisted in bringing the area into attainment and will continue help the area maintain the ozone NAAQS and are not listed as or considered to be contingency measures. There is no "double counting".

E. Comments Related to the Monitoring Data and the Monitoring Network

(1) Comment: We received comments asserting that the three years of data that should be analyzed for demonstration of attainment are 1994-1996. We also received a comment asking if the Pittsburgh-Beaver Valley 1999 and 2000 ozone data had been quality assured.

Response: EPA is taking action to approve a determination of attainment and a redesignation request and maintenance plan for the Pittsburgh area. The three years of violation free data upon which the determination of attainment is based, which the Commonwealth submitted to satisfy the applicable criteria for its redesignation request, is the ozone data for the 1998, 1999, and 2000 ozone seasons. EPA policy is to consider at the most recent 3 year period to determine attainment. The ozone data for the 1998, 1999, and 2000 ozone seasons from the14 ozone monitoring stations in the Pittsburgh-Beaver Valley Area have been quality assured. All data were contained in the EPA AIRS Air Quality Subsystem (AQS) by December 4, 2000. All data in AIRS is quality assured prior to submittal to AIRS, as required by 40 CFR § 58.35(d).

(2) Comment: We received comments expressing concern about the removal from service of the Penn Hills station during June 2001. The comments assign significance to the two exceedances that this station detected in 1999. One comment points out that the station had previously had monitored violations of the one hour NAAQS. Related comments express concern about the adequacy of the ozone network operated by PADEP and the Allegheny County Health

Department (ACHD) in the Pittsburgh- Beaver Valley Area and state that there should not be a change or substitution of any monitor until attainment has been achieved.

Response: Since the early 1980's the network in the area has satisfied the minimum federal requirements for the number of stations and types of stations as set forth at 40 CFR part 58. At a minimum, a network must have two stations in each urban area with population greater than 200,000. 40 CFR part 58, Appendix D, § 3.4. The original Pittsburgh-Beaver Valley network consisted of four stations in Allegheny County and two stations each in Washington County and Beaver County.

EPA regulations contemplate that the monitoring network may change over time, regardless of whether or not an area is currently designated as attainment. In an effort to improve the overall quality of data from the Pittsburgh-Beaver Valley area, the network has grown over time from the original eight to thirteen stations. This growth was carried out in accordance with state and federal law through a process of annual network reviews by the PADEP and the Allegheny County Health Department (ACHD) as required by 40 CFR § 58.20(d). EPA participated in these reviews and network changes, as required by 40 CFR § 58.21. EPA also approved the annual network designs in accordance 40 CFR § 58.25. Past annual reviews identified potential data needs of the Pittsburgh-Beaver Valley network. In order to address these potential data needs, the network has expanded to its current size of thirteen stations. During this time, one of the original monitoring stations, Penn Hills, was retired from service, and six new stations were added, for a net growth of five stations during the 1990's.

The Penn Hills station was removed from service because of the limited value of the data collected there since it was established in the early 1980's. Significantly, this station has not shown a violation of the ozone standard since 1982. Furthermore, the net addition of five monitors to the Pittsburgh-Beaver Valley network during the 1990's provides monitoring coverage over an area than is inclusive of the area previously monitored by Penn Hills. This resulted in the Penn Hills site capturing data redundant of data collected at other monitors. Specifically, exceedances at the Penn Hills monitor were captured at other stations. For example, since 1987, all unhealthy days detected at Penn Hills, except for June 19, 1995, were captured by the Brackenridge station (or the Harrison station which replaced Brackenridge in 1990). On June 19, 1995, when the Penn Hills station identified ozone exceedances, the Lawrenceville station, and the Murryville station, also showed exceedances. The two days of exceedances in 1999 detected at Penn Hills were captured by three other stations, Harrison, Lawrenceville, and Greensburg. Therefore, the closing of the Penn Hills station will result in no loss of data.

(3) Comment: We received a comment expressing concern that the Penn Hills station ozone data and the South Fayette station ozone data are no longer reported on the Pennsylvania Department of Environmental Protection (PADEP) web page.

Response: The PADEP web site does not list the Penn Hills station because that station was taken out of service in June 2001. [See the comment and response provided at E.(2)] The commenter found no data for South Fayette, because no exceedances were detected at this operating station as of the date of the commenter's letter. There are no statutory or regulatory

requirements that PADEP make its ozone data available on the Internet. However, in service to the citizens of the Commonwealth, it is PADEP's practice to provide daily information on its web page indicating those monitoring locations where exceedances of the 1- hour and/or 8-hour ozone standards have occurred (cautioning that this information is not based upon data that has been validated). If PADEP continues with its current practice, ozone data from the South Fayette monitor will be reported on the PADEP web site if this monitor ever exceeds the ozone standards.

(4) Comment: Several commenters expressed doubt that the area had attained the standard and suggested that violations in 2001 were imminent. One commenter asserts that the fact that the area had violated the 8-hour standard does not speak well of its being redesignated.

Response: The quality assured ozone data for 1998, 1999 and 2000 indicate that the Pittsburgh area has attained of the 1-hour NAAQS. Moreover, the preliminary data for the 2001 ozone season indicate, to date, continued attainment of the 1-hour standard. EPA does not believe that violations of the 1-hour standard are imminent in the Pittsburgh area.

The Pittsburgh area's status with respect to the 8-hour ozone standard is not germane to the approval of the redesignation request and maintenance plan for the 1-hour ozone standard.

III. What actions are we taking?

We are determining that the Pittsburgh-Beaver Valley moderate ozone nonattainment area has

attained the NAAQS for ozone. The Pittsburgh area includes the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of part D of Title 1 of the Act, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement are not applicable to the Pittsburgh area.

We are approving the redesignation of the Pittsburgh area to attainment of the 1-hour ozone standard and we are approving the section 175A maintenance plan as a revision to the Pennsylvania SIP. By approving the Pittsburgh area maintenance plan, EPA is also approving the Motor Vehicle Emissions Budgets contained in the plan as adequate for maintenance of the ozone NAAQS and for transportation conformity purposes. These Motor Vehicle Emissions Budgets are 109.65 tons/day of VOC for 1999, 98.22 tons/day of VOC for 2007, and 102 tons/day of VOC for 2011; for NOx the Motor Vehicle emissions budgets are 171.05 tons/day for 1999, 129.12 tons/day for 2007, and 115.02 tons/day for 2011.

We are converting the limited approval of the NSR program in the Commonwealth to full approval everywhere in the Commonwealth with the exception of the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

We are approving the 1990 NOx base year emissions inventory for the Pittsburgh area.

IV. Why are we taking this action to redesignate the area?

We are making a determination that the area has attained the 1-hour ozone standard. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998-2000 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Pittsburgh area. Preliminary data for the 2001 ozone season also indicates that the area continues in attainment. EPA believes that it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured, air quality monitoring data). See May 10, 1995, memorandum from John Seitz, and Sierra Club v. EPA, 99 F.3.d 1551 (10th Cir. 1996).

We are approving the maintenance plan as a revision to the SIP because it meets the requirements of section 175A and 107(d). We are also redesignating the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained, the area has continued in attainment and the area has satisfied all other requirements for redesignation.

V. What are the effects of redesignation to attainment of the 1-hour NAAQS?

Theses actions determine that the area attained the 1-hour ozone standard and that the requirements of section 172(c)(1) and 182(b)(1) concerning the submission of the ozone

attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment are not applicable to the area.

The redesignation changes the official designation of the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland from nonattainment to attainment for the 1-hour ozone standard. It also approves a SIP revision that puts into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard. By approving the maintenance plan, EPA is also approving the mobile source emissions budgets included in the plan for purposes of transportation conformity.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This action also redesignates an area to attainment, an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new

requirements on small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § § 601, et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also redesignates an area to attainment. The redesignation merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety

Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Additionally, redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. § § 3501 et seq.).

B. Submission to Congress and the Comptroller General.

The Congressional Review Act, 5 U.S.C. § § 801, et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. § 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to redesignate the Pittsburgh area to attainment of the 1-hour ozone NAAQS, approve a 10-year maintenance plan, convert the New Source Review program to full approval, approve the NOx base year inventory, and approve Motor Vehicle Emissions Budgets, may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. § 7607 (b)(2)).

List of Subjects in 40 CFR Part 52
Environmental protection, Air pollution control, Incorporation by reference, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 81
Environmental Protection, Air Pollution Control.

10/03/01
Dated:

Thomas C. Voltaggio,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN - Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(188) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(188) Revisions to the Pennsylvania Regulations including a 10-year ozone maintenance plan for the Pittsburgh-Beaver Valley area, submitted on May 21, 2001 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference

(A) Letter dated May 21, 2001 submitted by the Pennsylvania Department of Environmental Protection transmitting the maintenance plan for Pittsburgh-Beaver Valley Area.

(B) The Pittsburgh-Beaver Valley Area ozone maintenance plan submitted by the Pennsylvania Department of Environmental Protection, effective May 15, 2001. This plan establishes motor vehicle emissions budgets for VOCs of 109.65 tons/day for 1999, 98.22 tons/day for 2007, and 102 tons/day for 2011. This plan also establishes motor vehicle emissions budgets for NOx of 171.05 tons/day for 1999, 129.12 tons/day for 2007, and 115.02 tons/day for 2011.

(ii) Additional Material

Remainder of State Submittal pertaining to the revision listed in paragraph (c)(188)(i) of this action.

3. Section 52.2036 is amended by adding paragraph (l) to read as follows:

§ 52.2036 1990 Base Year Emission Inventory.

* * * * *

(l) EPA approves the 1990 NOx base year emission inventory for the Pittsburgh-Beaver Valley area, submitted by the Pennsylvania Department of Environmental Protection on March 22, 1996 and supplemented on February 18, 1997.

PART 81 - [AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 81.339 is amended by revising the ozone table entry for the Pittsburgh-Beaver Valley Area to read as follows:

81.339 Pennsylvania

* * * * *

Pennsylvania- Ozone (1-Hour Standard)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Pittsburgh-Beaver Valley Area				
Allegheny County	[Insert date of publication]	Attainment		
Armstrong County	[Insert date of publication]	Attainment		
Beaver County	[Insert date of publication]	Attainment		
Butler County	[Insert date of publication]	Attainment		
Fayette County	[Insert date of publication]	Attainment		
Washington County	[Insert date of publication]	Attainment		
Westmoreland County	[Insert date of publication]	Attainment		
* * * * * * *				

[1]This date is November 15, 1990 unless otherwise noted.

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